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PTO/SB/17 (1-06)

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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<b>FEE TRANSMITTAL</b> <b>for FY 2007</b> Patent fees are subject to annual revision. Effective December 8, 2004	<b>Complete if Known</b>	
	Application Number	10/792,149
	Confirmation Number	4849
	Filing Date	March 3, 2004
	First Named Inventor	John Joseph Scarchilli
	Examiner Name	Reginald L. Alexander
	Art Unit	1761
<b>TOTAL AMOUNT OF PAYMENT (\$500)</b>		Docket No. 9173L

<b>METHOD OF PAYMENT</b>		<b>FEE CALCULATION (continued)</b>																																					
1. [X] The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to: Deposit Account Number: 16-2480 Deposit Account Name: The Procter & Gamble Company		<b>5. ADDITIONAL FEES</b> <table border="1"> <thead> <tr> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Extension for reply within 1<sup>st</sup> month</td> <td>(\$120) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 2<sup>nd</sup> month</td> <td>(\$450) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 3<sup>rd</sup> month</td> <td>(\$1,020) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 4<sup>th</sup> month</td> <td>(\$1,590) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 5<sup>th</sup> month</td> <td>(\$2,160) <input type="checkbox"/></td> </tr> <tr> <td>Information Disclosure Statement fee</td> <td>(\$180) <input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)</td> <td>(\$130) <input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet</td> <td>(\$50) <input type="checkbox"/></td> </tr> <tr> <td>Non-English specification</td> <td>(\$130) <input type="checkbox"/></td> </tr> <tr> <td>Notice of Appeal</td> <td>(\$500) <input type="checkbox"/></td> </tr> <tr> <td>Filing a brief in support of an appeal</td> <td>(\$500) [x]</td> </tr> <tr> <td>Request for oral hearing</td> <td>(\$1,000) <input type="checkbox"/></td> </tr> <tr> <td>Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)</td> <td>(\$1,370) <input type="checkbox"/></td> </tr> <tr> <td>Other:</td> <td><input type="checkbox"/></td> </tr> </tbody> </table>		Fee Description	Fee Paid	Extension for reply within 1 <sup>st</sup> month	(\$120) <input type="checkbox"/>	Extension for reply within 2 <sup>nd</sup> month	(\$450) <input type="checkbox"/>	Extension for reply within 3 <sup>rd</sup> month	(\$1,020) <input type="checkbox"/>	Extension for reply within 4 <sup>th</sup> month	(\$1,590) <input type="checkbox"/>	Extension for reply within 5 <sup>th</sup> month	(\$2,160) <input type="checkbox"/>	Information Disclosure Statement fee	(\$180) <input type="checkbox"/>	37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)	(\$130) <input type="checkbox"/>	37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet	(\$50) <input type="checkbox"/>	Non-English specification	(\$130) <input type="checkbox"/>	Notice of Appeal	(\$500) <input type="checkbox"/>	Filing a brief in support of an appeal	(\$500) [x]	Request for oral hearing	(\$1,000) <input type="checkbox"/>	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370) <input type="checkbox"/>	Other:	<input type="checkbox"/>						
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Provisional Utility filing fee		(Total = \$200)	<input type="checkbox"/>																																				
3. <b>APPLICATION SIZE FEE:</b> Sheets of Spec and Drawings [22] (\$250 for each 50 sheets in excess of 100, except for sequence and program listings) <b>SUBTOTAL (2)+(3) (\$1,000)</b>		SUBTOTAL (5) <b>(\$500)</b>																																					
4. <b>EXTRA CLAIM FEES FOR UTILITY AND REISSUE:</b> <table border="1"> <thead> <tr> <th>Extra Claims</th> <th>Fee from Below</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Total Claims [10] - 20** = <input type="checkbox"/> x</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Independent Claims [3] - 3** = <input type="checkbox"/> x</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Multiple Dependent claims:</td> <td><input type="checkbox"/> =</td> <td><input type="checkbox"/></td> </tr> </tbody> </table> ** or number previously paid, if greater; For Reissues, see below <b>Fee Description</b> Claims in excess of 20 (\$50 per claim) Independent claims in excess of 3 (\$200 per claim) Multiple dependent claim, if not paid (\$360) **Reissue: each independent claim over 3 and more than in the original patent (\$200 per claim) **Reissue claims: each claim over 20 and more than original patent (\$50 per claim) <b>SUBTOTAL (4) (\$)</b>		Extra Claims	Fee from Below	Fee Paid	Total Claims [10] - 20** = <input type="checkbox"/> x	<input type="checkbox"/> =	<input type="checkbox"/>	Independent Claims [3] - 3** = <input type="checkbox"/> x	<input type="checkbox"/> =	<input type="checkbox"/>	Multiple Dependent claims:	<input type="checkbox"/> =	<input type="checkbox"/>	SUBTOTAL (5) <b>(\$500)</b>																									
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<b>SUBMITTED BY</b>		<b>Complete (if applicable)</b>	
Name (Print/Type)	Ingrid N. Hackett	Registration No. (Attorney/Agent)	46,770
Signature	<i>Ingrid N. Hackett</i>	Telephone	(513) 634-5395
		Date	March 30, 2007

+ This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon individual case. Any comments on the amount of time you are required to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P. O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**TO: Mail Stop Appeal Brief – Patents - United States Patent and Trademark Office**

Fax No. 571-273-8300

**FROM: Mary E. Yauger**

Fax No. 513-634-3752

Phone No. 513-634-4223

Application No.: 10/792,149

Inventor(s): Scarchilli et al

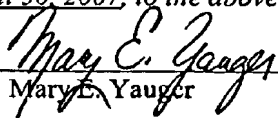
Filed: 3/3/2004

Docket No.: 9173L

Confirmation No.: 4849

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**CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8**

*I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on April 30, 2007, to the above-identified facsimile number.*

  
Mary E. Yauger

Listed below are the item(s) being submitted with this Certificate of Transmission:\*\*

- 1) Appeal Brief (15 pages)
- 2) Fee Transmittal (1 page)

Number of Pages Including this Page: 17

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**\*\*Note:** Each paper must have its own certificate of transmission, OR this certificate must identify each submitted paper.

(FAX-USPTO.doc Revised 11/18/2005)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/792,149  
Applicant(s) : John Joseph Scarchilli  
Filed : March 3, 2004  
Title : LIQUID INFUSION PODS CONTAINING  
INSOLUBLE MATERIALS  
TC/A.U. : 1761  
Examiner : Reginald Alexander  
Conf. No. : 4849  
Docket No. : 9173L  
Customer No. : 27752

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on February 28, 2007.

A timely Notice of Appeal was filed on January 29, 2007.

**REAL PARTY IN INTEREST**

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

**RELATED APPEALS AND INTERFERENCES**

There are no known related appeals, interferences, or judicial proceedings.

**STATUS OF CLAIMS**

Claims 1 - 23 are pending.

Claims 1-3, 8 - 10, 16 - 19, and 21 have been rejected.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

**STATUS OF AMENDMENTS**

No amendment was filed.

05/01/2007 HLE333 00000026 162480 10792149

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### SUMMARY OF CLAIMED SUBJECT MATTER

A liquid infusion pod having a fluid distribution member and a liquid permeable first filter member. (specification, Abstract, page 23). The filter member is sealed to the fluid distribution member forming a first interior chamber that contains a liquid dispersible material. (specification, Abstract, page 23). The fluid distribution member has at least one injection nozzle protruding downward from the top of the fluid distribution member into the interior chamber. (specification, Abstract, page 23). The injection nozzle has at least one infusion port that directs fluid into the first interior chamber in a direction that is not normal to the top plane of the fluid distribution member. (specification, Abstract, page 23).

1. A liquid infusion pod (reference number 12, Figure 1) comprising a liquid permeable fluid distribution member (reference number 20, Figure 1) situated in a top plane (reference TP, Figure 1) and a liquid permeable first filter member (reference number 22, Figure 1) wherein the first filter member (reference number 22, Figure 1) is engaged to the fluid distribution member (reference number 20, Figure 1) forming a first interior chamber (reference number 11, Figure 1) that comprises a liquid dispersible material (reference number 18, Figure 1), the fluid distribution member (reference number 20, Figure 1) comprising at least one injection nozzle (reference number 26, Figure 1) protruding downward from the top plane (reference TP, Figure 1) into the interior chamber (reference number 11, Figure 1), the injection nozzle (reference number 26, Figure 1) has at least one infusion port (reference number 24, Figure 1) that directs fluid into the first interior chamber (reference number 11, Figure 1) in a direction that is not normal to the top plane (reference TP, Figure 1).
2. The pod (reference number 12, Figure 1) of claim 1 wherein the liquid dispersible material (reference number 18, Figure 1) is substantially dry and comprises at least one of a fat containing material, a protein containing material and mixtures thereof.
3. The pod (reference number 12, Figure 1) of claim 1 wherein the surface area of the infusion port is small enough that water will flow through the infusion port with a linear velocity of at least about 25 cm/second under a pressure of about 1.5 atmospheres or more.
4. A liquid infusion pod (reference number 12, Figure 1) comprising a liquid permeable fluid distribution member (reference number 20, Figure 1) situated in a top plane

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(reference TP, Figure 1) and a liquid permeable first filter member (reference number 22, Figure 1) wherein the first filter member (reference number 22, Figure 1) is engaged to the fluid member (reference number 20, Figure 1) forming a first interior chamber (reference number 11, Figure 1) that comprises a liquid dispersible material (reference number 18, Figure 1), the fluid member (reference number 20, Figure 1) comprising at least one injection nozzle (reference number 26, Figure 1) protruding downward from the top plane (reference TP, Figure 1) into the interior chamber, the injection nozzle (reference number 26, Figure 1) has at least one infusion port that directs fluid into the first interior chamber (reference number 11, Figure 1) in a direction that is not normal to the top plane (reference TP, Figure 1)

the pod (reference number 12, Figure 1) further comprising a second filter member that is sealed to the fluid member (reference number 20, Figure 1) on the side opposite the first filter member (reference number 22, Figure 1) defining a second interior chamber (reference number 53, Figure 6) which comprises a liquid extractable material.

5. The pod (reference number 12, Figure 1) of claim 4 wherein the liquid extractable material comprises less than about 2%, by weight, of added materials selected from the group consisting of oils, fats, proteins and mixtures of these.
6. The pod (reference number 12, Figure 1) of claim 5 wherein the injection nozzle (reference number 26, Figure 1) has a liquid inlet opening that has a surface area that is between about 2% to about 50% of the total surface area of liquid distribution member.
7. The pod (reference number 12, Figure 1) of claim 6 wherein the liquid inlet opening is covered with a third filter member.
8. The pod (reference number 12, Figure 1) of claim 1 wherein the fluid member (reference number 20, Figure 1) and the injection nozzle (reference number 26, Figure 1) are substantially liquid impermeable except for the infusion port.
9. The pod (reference number 12, Figure 1) of claim 8 wherein "substantially liquid impermeable" means that at least about 90%, preferably at least about 95%, more preferably at least about 98%, by weight, of the liquid fed onto the liquid distribution member flows through the infusion ports into the first interior chamber (reference number 11, Figure 1).
10. The pod (reference number 12, Figure 1) of claim 1 wherein the injection nozzle (reference number 26, Figure 1) is substantially rigid.

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11. A liquid infusion pod (reference number 12, Figure 1) comprising a liquid permeable fluid member (reference number 20, Figure 1) situated in a top plane (reference TP, Figure 1) and a liquid permeable first filter member (reference number 22, Figure 1) wherein the first filter member (reference number 22, Figure 1) is engaged to the fluid member (reference number 20, Figure 1) forming a first interior chamber (reference number 11, Figure 1) that comprises a liquid dispersible material (reference number 18, Figure 1), the fluid member (reference number 20, Figure 1) comprising at least one injection nozzle (reference number 26, Figure 1) protruding downward from the top plane (reference TP, Figure 1) into the interior chamber, the injection nozzle (reference number 26, Figure 1) has at least one infusion port that directs fluid into the first interior chamber (reference number 11, Figure 1) in a direction that is not normal to the top plane (reference TP, Figure 1)

further comprising an extraction pod situated above the liquid infusion pod (reference number 12, Figure 1) with respect to the flow of the liquid through the pods (reference number 12, Figure 1), the extraction pod comprising a second filter member defining a second interior chamber (reference number 53, Figure 6) comprising an extractable material.

12. The pod (reference number 12, Figure 1) of claim 11 wherein the fluid member (reference number 20, Figure 1) comprises supporting protrusions between the extraction pod and the infusion pod (reference number 12, Figure 1).
13. A liquid infusion pod (reference number 12, Figure 1) comprising a liquid permeable fluid member (reference number 20, Figure 1) situated in a top plane (reference TP, Figure 1) and a liquid permeable first filter member (reference number 22, Figure 1) wherein the first filter member (reference number 22, Figure 1) is engaged to the fluid member (reference number 20, Figure 1) forming a first interior chamber (reference number 11, Figure 1) that comprises a liquid dispersible material (reference number 18, Figure 1), the fluid member (reference number 20, Figure 1) comprising at least one injection nozzle (reference number 26, Figure 1) protruding downward from the top plane (reference TP, Figure 1) into the interior chamber, the injection nozzle (reference number 26, Figure 1) has at least one infusion port that directs fluid into the first interior chamber (reference number 11, Figure 1) in a direction that is not normal to the top plane (reference TP, Figure 1)

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wherein the fluid member (reference number 20, Figure 1) comprises supporting protrusions that extend into the first interior chamber (reference number 11, Figure 1) and support the first filter member.

14. The pod (reference number 12, Figure 1) of claim 1 wherein the fluid member (reference number 20, Figure 1) slopes downward away from the top plane (reference TP, Figure 1) towards the injection nozzle (reference number 26, Figure 1).
15. A liquid infusion pod (reference number 12, Figure 1) comprising a liquid permeable fluid member (reference number 20, Figure 1) situated in a top plane (reference TP, Figure 1) and a liquid permeable first filter member (reference number 22, Figure 1) wherein the first filter member (reference number 22, Figure 1) is engaged to the fluid member (reference number 20, Figure 1) forming a first interior chamber (reference number 11, Figure 1) that comprises a liquid dispersible material (reference number 18, Figure 1),

wherein the fluid member (reference number 20, Figure 1) slopes downward away from the top plane (reference TP, Figure 1) towards the injection nozzle (reference number 26, Figure 1),

the fluid member (reference number 20, Figure 1) comprising at least one injection nozzle (reference number 26, Figure 1) protruding downward from the top plane (reference TP, Figure 1) into the interior chamber, the injection nozzle (reference number 26, Figure 1) has at least one infusion port that directs fluid into the first interior chamber (reference number 11, Figure 1) in a direction that is not normal to the top plane (reference TP, Figure 1)

further comprising an extraction pod situated above the liquid infusion pod (reference number 12, Figure 1) with respect to the flow of the liquid through the pod (reference number 12, Figure 1) s, the extraction pod comprising a second filter member defining a second interior chamber (reference number 53, Figure 6) comprising an extractable material, the extraction pod being situated within the sloping portion of the fluid member (reference number 20, Figure 1) such that the extraction pod is adjacent and below the top plane (reference TP, Figure 1).

16. The pod (reference number 12, Figure 1) of claim 1 wherein the liquid dispersible material (reference number 18, Figure 1) is selected from the group consisting of solids, powders, granules, and mixtures thereof, preferably the liquid dispersible material

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(reference number 18, Figure 1) is selected from the group consisting of particles whose sizes are from about 100 $\mu$  to 1 cm in diameter.

17. The pod (reference number 12, Figure 1) of claim 1 wherein the liquid dispersible material (reference number 18, Figure 1) is selected from the group consisting of dissolvable materials, liquid extractable materials, non-dissolvable materials and mixtures thereof.
18. The pod (reference number 12, Figure 1) of claim 1 wherein the injection nozzle (reference number 26, Figure 1) penetrates the infusion pod (reference number 12, Figure 1) by at least about 20% of the distance measured from the top plane (reference TP, Figure 1) to the bottom most portion of the first filter member.
19. The pod (reference number 12, Figure 1) of claim 9 wherein the at least one infusion port is located within the range of from about 20% to about 100% of the distance of penetration of the injection nozzle (reference number 26, Figure 1).
20. The pod (reference number 12, Figure 1) of claim 1 wherein the at least one infusion port that is not normal to the top plane (reference TP, Figure 1) directs water from the injection nozzle (reference number 26, Figure 1) at an angle of from about 20° to about 160° from the point of the infusion port on a line normal to the top plane (reference TP, Figure 1).
21. A liquid infusion pod (reference number 12, Figure 1) comprising a liquid permeable fluid member (reference number 20, Figure 1) situated in a top plane (reference TP, Figure 1) and a liquid permeable first filter member (reference number 22, Figure 1) wherein the first filter member (reference number 22, Figure 1) is engaged to the fluid member (reference number 20, Figure 1) forming a first interior chamber (reference number 11, Figure 1) that comprises a liquid dispersible material (reference number 18, Figure 1), the fluid member (reference number 20, Figure 1) comprising at least one injection nozzle (reference number 26, Figure 1) having a first position that is substantially flush with the top plane (reference TP, Figure 1) and the injection nozzle (reference number 26, Figure 1) having a second position wherein it is protruding downward from the top plane (reference TP, Figure 1) into the first interior chamber (reference number 11, Figure 1), the injection nozzle (reference number 26, Figure 1) having at least one infusion port that is open when in the second position and wherein the infusion port directs fluid into the first interior chamber (reference number 11, Figure 1) in a direction that is not normal to the top plane (reference TP, Figure 1).



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22. A liquid infusion pod (reference number 12, Figure 1) comprising a liquid permeable fluid member (reference number 20, Figure 1) situated in a top plane (reference TP, Figure 1) and a liquid permeable first filter member (reference number 22, Figure 1) that is releaseably attached to the liquid distribution member wherein the first filter member (reference number 22, Figure 1) and the fluid member (reference number 20, Figure 1) form a first interior chamber (reference number 11, Figure 1) and within the first interior chamber (reference number 11, Figure 1) is a self contained, pre-dosed filter pod having a second interior chamber (reference number 53, Figure 6) that comprises a liquid dispersible material (reference number 18, Figure 1), the fluid member (reference number 20, Figure 1) comprising at least one injection nozzle (reference number 26, Figure 1) protruding downward from the top plane (reference TP, Figure 1) into the first interior chamber (reference number 11, Figure 1) without piercing the pre-dosed filter pod, the injection nozzle (reference number 26, Figure 1) having at least one infusion port that directs fluid into the second interior chamber (reference number 53, Figure 6) in a direction that is not normal to the top plane (reference TP, Figure 1).
23. A liquid infusion pod (reference number 12, Figure 1) comprising a liquid permeable fluid member (reference number 20, Figure 1) situated in a top plane (reference TP, Figure 1) and a liquid permeable first filter member (reference number 22, Figure 1) wherein the filter member is engaged to the fluid member (reference number 20, Figure 1) forming a first interior chamber (reference number 11, Figure 1) that comprises a liquid dispersible material (reference number 18, Figure 1), the fluid member (reference number 20, Figure 1) comprising at least one injection nozzle (reference number 26, Figure 1) protruding downward from the top plane (reference TP, Figure 1) into the first interior chamber (reference number 11, Figure 1), the injection nozzle (reference number 26, Figure 1) has at least one infusion port and at least one deflection plate wherein liquid flows through the infusion port and is directed onto the deflection plate such that the fluid deflects off of the deflection plate into the first interior chamber (reference number 11, Figure 1) in a direction that is not normal to the top plane (reference TP, Figure 1).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Rejection Under 35 USC §102 Over Werner (U.S. Patent 2,926,594)

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Customer No. 27752

Rejection Under 35 USC §103(a) Over Cai (U.S. Patent 6,777,007) in view of  
Clermont(1,377,316)

### ARGUMENTS

#### Rejection Under 35 USC §102 Over Werner

Claims 1-3, 8 – 10, 16 – 19, and 21 have been rejected under 35 U.S.C. §102(b) as anticipated by Werner et al. (U.S. Patent 2,926,594). The office action contends that Werner shows all of the essential components of Applicants' claimed liquid infusion pod. Such a rejection is respectfully transversed as it would apply to the claims herein.

Applicants submit that the Werner patent does not anticipate Applicants' Claim 1. Claim 1 requires that "the injection nozzle that has at least one infusion port that directs fluid into the first interior chamber in a direction that is not normal to the top plane." The Werner patent does not disclose the injection nozzle which has at least one infusion port that directs fluid into the first interior chamber in a direction that is not normal to the top plane. In fact, the Werner patent discloses an injection nozzle that has at least one infusion port that directs fluid into the first interior chamber in a direction that is normal to the top plane. Furthermore, the Werner patent does not disclose the first filter member engaged to the fluid distribution member to form a first interior chamber. In contrast, the Werner patent has "only" the cloth bag 10 forming a first interior chamber.

Given the foregoing distinctions between the elements of the infusion device of the Werner reference and the elements of the infusion pod now claimed as Applicants' invention, it is submitted that the Werner reference cannot properly be characterized as anticipatory of Applicants' amended Claim 1 under 35 U.S.C. §102(b). Claims 2 -3, 8 – 10, and 16 – 19 all depend from claim 1 either directly or indirectly and are thus believed to be patentable over Werner for the same reasons as claim 1. Such a rejection should therefore be withdrawn with respect to these claims.

#### Rejection Under 35 USC §103(a) Over Cai in view of Clermont

Claims 1 – 3, 8 – 10, 14, and 16 - 22 have been rejected under 35 USC §103(a) as being unpatentable over Cai in view of Clermont. Applicants transverse these rejections.

It is basic patent law that the rejection of the present invention under 35 U.S.C. §103 must comport with the standard set forth in *Graham v. John Deere Company* 383 US1, 148 USPQ

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459 (1966), explained in MPEP Section 706. The Supreme Court's guidance in that landmark case, requires that, to establish a *prima facie* case of obviousness, the USPTO must

- (1) Set forth the differences in the claims over the applied references;
- (2) Set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and
- (3) Explain why the proposed modification would be obvious.

To satisfy Step (3), the Patent Office must identify where the prior art provides a motivating suggestion to make the modification proposed in Step (2). See *In re Jones*, 958 F2d 347, 21 USPQ 2d 1941 (Fed. Cir. 1992). The mere fact that the prior art may be modified as suggested by the Patent Office does not make the modification obvious unless the prior art suggests the desirability of the modification. See *In re Fritch*, 922 F2d 1260, 23 USPQ 2d 1780 (Fed. Cir. 1992).

With respect to independent Claim 1, 22, and 23, Applicants respectfully submit that the combined disclosures of Cai and Clermont would not lead the skilled artisan to a realization of Applicants' invention. Attention is directed to the fact that neither Cai nor Clermont 146 teach or disclose all of the elements of Claim 1. Namely, neither Cai nor Clermont disclose a liquid permeable fluid distribution member. Accordingly, it is submitted that there is no motivation in either reference to combine the pod disclosed Cai with the percolation apparatus disclosed in Clermont. Namely, the Clermont patent does not disclose the need for a pod. In fact, the apparatus is not built structurally to include a pod. (See Clermont). Moreover, neither Cai nor Clermont discloses an injection nozzle which has at least one infusion port that directs fluid into the first interior chamber in a direction that is not normal to the top plane

In light of the case law, it is submitted that the rejection of Claim 1, 22, and 23 as obvious over Cai in further view of Clermont is improper. It is requested that such a rejection should be reconsidered and withdrawn.

Claims 2 -3, 8 - 10, 14, and 16 - 20 depend from Claim 1 and are allowable for the same reasons given above with respect to Claim 1. Therefore, the Examiner is respectfully requested to withdraw the rejection of Claims 1 - 23 and allow these claims.

Thus, the rejection is not supported by the kind of specificity required to sustain a conclusion of obviousness. *Ex parte Humphreys*, 24 USPQ 2d 1255, 1262 (BPAI 1992). The Examiner's rejection is not specific as to how one of ordinary skill in the art would have found it Claims 1-23 of the claimed invention obvious. For this reason alone, the rejection should be withdrawn.

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### SUMMARY

In view of all of the above, it is respectfully submitted that the Examiner reconsider and withdraw the rejection under 35 U.S.C. §102 and 35 U.S.C. §103. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1- 23 is respectfully requested.

Respectfully submitted,

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## CLAIMS APPENDIX

1. (Rejected) A liquid infusion pod comprising a liquid permeable fluid distribution member situated in a top plane and a liquid permeable first filter member wherein the first filter member is engaged to the fluid distribution member forming a first interior chamber that comprises a liquid dispersible material, the fluid distribution member comprising at least one injection nozzle protruding downward from the top plane into the interior chamber, the injection nozzle has at least one infusion port that directs fluid into the first interior chamber in a direction that is not normal to the top plane.
2. (Rejected) The pod of claim 1 wherein the liquid dispersible material is substantially dry and comprises at least one of a fat containing material, a protein containing material and mixtures thereof.
3. (Rejected) The pod of claim 1 wherein the surface area of the infusion port is small enough that water will flow through the infusion port with a linear velocity of at least about 25 cm/second under a pressure of about 1.5 atmospheres or more.
4. (Allowed) A liquid infusion pod comprising a liquid permeable fluid distribution member situated in a top plane and a liquid permeable first filter member wherein the first filter member is engaged to the fluid distribution member forming a first interior chamber that comprises a liquid dispersible material, the fluid distribution member comprising at least one injection nozzle protruding downward from the top plane into the interior chamber, the injection nozzle has at least one infusion port that directs fluid into the first interior chamber in a direction that is not normal to the top plane  
  
the pod further comprising a second filter member that is sealed to the fluid distribution member on the side opposite the first filter member defining a second interior chamber (reference number 53, Figure 6) which comprises a liquid extractable material.
5. (Allowed) The pod of claim 4 wherein the liquid extractable material comprises less than about 2%, by weight, of added materials selected from the group consisting of oils, fats, proteins and mixtures of these.
6. (Allowed) The pod of claim 5 wherein the injection nozzle has a liquid inlet opening that has a surface area that is between about 2% to about 50% of the total surface area of liquid distribution member.

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7. (Allowed) The pod of claim 6 wherein the liquid inlet opening is covered with a third filter member.
8. (Rejected) The pod of claim 1 wherein the fluid distribution member and the injection nozzle are substantially liquid impermeable except for the infusion port.
9. (Rejected) The pod of claim 8 wherein "substantially liquid impermeable" means that at least about 90%, preferably at least about 95%, more preferably at least about 98%, by weight, of the liquid fed onto the liquid distribution member flows through the infusion ports into the first interior chamber.
10. (Rejected) The pod of claim 1 wherein the injection nozzle is substantially rigid.
11. (Allowed) A liquid infusion pod comprising a liquid permeable fluid distribution member situated in a top plane and a liquid permeable first filter member wherein the first filter member is engaged to the fluid distribution member forming a first interior chamber that comprises a liquid dispersible material, the fluid distribution member comprising at least one injection nozzle protruding downward from the top plane into the interior chamber, the injection nozzle has at least one infusion port that directs fluid into the first interior chamber in a direction that is not normal to the top plane  
  
further comprising an extraction pod situated above the liquid infusion pod with respect to the flow of the liquid through the pods, the extraction pod comprising a second filter member defining a second interior chamber comprising an extractable material.
12. (Allowed) The pod of claim 11 wherein the fluid distribution member comprises supporting protrusions between the extraction pod and the infusion pod.
13. (Allowed) A liquid infusion pod comprising a liquid permeable fluid distribution member situated in a top plane and a liquid permeable first filter member wherein the first filter member is engaged to the fluid distribution member forming a first interior chamber that comprises a liquid dispersible material, the fluid distribution member comprising at least one injection nozzle protruding downward from the top plane into the interior chamber, the injection nozzle has at least one infusion port that directs fluid into the first interior chamber in a direction that is not normal to the top plane  
  
[The pod of claim 1] wherein the fluid distribution member comprises supporting protrusions that extend into the first interior chamber and support the first filter member.

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14. (Rejected) The pod of claim 1 wherein the fluid distribution member slopes downward away from the top plane towards the injection nozzle.
15. (currently amended) A liquid infusion pod comprising a liquid permeable fluid distribution member situated in a top plane and a liquid permeable first filter member wherein the first filter member is engaged to the fluid distribution member forming a first interior chamber that comprises a liquid dispersible material,  
wherein the fluid distribution member slopes downward away from the top plane towards the injection nozzle,  
the fluid distribution member comprising at least one injection nozzle protruding downward from the top plane into the interior chamber, the injection nozzle has at least one infusion port that directs fluid into the first interior chamber in a direction that is not normal to the top plane  
further comprising an extraction pod situated above the liquid infusion pod with respect to the flow of the liquid through the pods, the extraction pod comprising a second filter member defining a second interior chamber comprising an extractable material, the extraction pod being situated within the sloping portion of the fluid distribution member such that the extraction pod is adjacent and below the top plane.
16. (Rejected) The pod of claim 1 wherein the liquid dispersible material is selected from the group consisting of solids, powders, granules, and mixtures thereof, preferably the liquid dispersible material is selected from the group consisting of particles whose sizes are from about 100 $\mu$  to 1 cm in diameter.
17. (Rejected) The pod of claim 1 wherein the liquid dispersible material is selected from the group consisting of dissolvable materials, liquid extractable materials, non-dissolvable materials and mixtures thereof.
18. (Rejected) The pod of claim 1 wherein the injection nozzle penetrates the infusion pod by at least about 20% of the distance measured from the top plane to the bottom most portion of the first filter member.
19. (Rejected) The pod of claim 9 wherein the at least one infusion port is located within the range of from about 20% to about 100% of the distance of penetration of the injection nozzle.

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20. (Rejected) The pod of claim 1 wherein the at least one infusion port that is not normal to the top plane directs water from the injection nozzle at an angle of from about 20° to about 160° from the point of the infusion port on a line normal to the top plane.
21. (Rejected) A liquid infusion pod comprising a liquid permeable fluid distribution member situated in a top plane and a liquid permeable first filter member wherein the first filter member is engaged to the fluid distribution member forming a first interior chamber that comprises a liquid dispersible material, the fluid distribution member comprising at least one injection nozzle having a first position that is substantially flush with the top plane and the injection nozzle having a second position wherein it is protruding downward from the top plane into the first interior chamber, the injection nozzle having at least one infusion port that is open when in the second position and wherein the infusion port directs fluid into the first interior chamber in a direction that is not normal to the top plane.
22. (Rejected) A liquid infusion pod comprising a liquid permeable fluid distribution member situated in a top plane and a liquid permeable first filter member that is releaseably attached to the liquid distribution member wherein the first filter member and the fluid distribution member form a first interior chamber and within the first interior chamber is a self contained, pre-dosed filter pod having a second interior chamber that comprises a liquid dispersible material, the fluid distribution member comprising at least one injection nozzle protruding downward from the top plane into the first interior chamber without piercing the pre-dosed filter pod, the injection nozzle having at least one infusion port that directs fluid into the second interior chamber in a direction that is not normal to the top plane.
23. (Rejected) A liquid infusion pod comprising a liquid permeable fluid distribution member situated in a top plane and a liquid permeable first filter member wherein the filter member is engaged to the fluid distribution member forming a first interior chamber that comprises a liquid dispersible material, the fluid distribution member comprising at least one injection nozzle protruding downward from the top plane into the first interior chamber, the injection nozzle has at least one infusion port and at least one deflection plate wherein liquid flows through the infusion port and is directed onto the deflection plate such that the fluid deflects off of the deflection plate into the first interior chamber in a direction that is not normal to the top plane.



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